Supreme Court, U.S.
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No. 05-1253

IN THE
SUPREME COURT OF THE UNITED STATES
October 2005 term

CARL A. GEE,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

At what point do funds originating with the federal government pass beyond the point permitting reliance upon or prosecution for a violation Title 18, U.S.C. § 666 ?

Lower courts in this case have said never.

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Petition for Writ of Certiorari

Opinion Below

The opinion of the United States Court of Appeals for the Seventh Circuit Is Reported at *United States of America v. Carl A. Gee*, 432 f. 3d 713 (7th cir. 2005) The Seventh Circuit affirmed the June 23rd Decision and Order of the United States District Court of for the Eastern District of Wisconsin in District Court Case # 02-CR-210. *See* Appendices A-B.

Jurisdictional Statement

This petition seeks review of a decision of the United States Court of Appeals for the Seventh Circuit. That decision was rendered on December 23, 2005. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Statutory Provisions Involved

See appropriate Appendix section.

Statement of the Case

On November 19, 2003, a grand jury sitting in the Eastern District of Wisconsin returned an indictment against Gary R. George. This two count indictment alleged in count one that George had conspired with others

"(a) to commit offenses involving federal program funds under Title 18, U.S.C. §666; and (b) to commit mail and wire fraud offenses, in violation of Title 18, U.S.C. §§1341, 1343, and 1346." This conspiracy was alleged to have violated Title 18, U.S.C. §371.

Count two of the indictment alleged that Georg had conspired with others to obtain

"...kickbacks from legal fees paid by the Police Athletic League, in violation of Title 18, U.S.C. §§666(a)(1)(B), 1341 and 1346." This count alleged that George's activities and those of his co-conspirators violated Title 18, U.S.C. §371.

On January 6, 2004, a grand jury sitting in the Eastern District of Wisconsin returned a superseding indictment alleging the two con-

spiracies set forth in the original indictment and three additional substantive counts. Count three of the superseding indictment alleged that Gary George knowingly and intentionally misapplied property of the Police Athletic League by rigging the bidding process with respect to a construction project in violation of Title 18, U.S.C. §666(a)(1)(A) and (2). Count four alleged that Gary George had corruptly solicited and accepted $2,500 intending to be rewarded in connection with a State of Wisconsin transaction having a value in excess of $5,000. This activity was alleged to have violated Title 18, U.S.C. §666(a)(1)(B). Finally, count five of the superseding indictment alleged that Gary George conducted a financial transaction using the proceeds of unlawful activity in violation of Title 18, U.S.C. §1956(a)(1)(B)(I).

On January 22, 2004, a plea agreement was filed and a change of plea hearing for George was conducted before the Honorable Rudolph T. Randa, Chief United States District Judge.

George was sentenced by the District Court on August 5, 2004 after a sentencing hearing conducted on August 4th and 5th.

On March 16, 2004, a second superseding indictment was returned by a grand jury. This indictment charged the Petitioner, Carl A. Gee with having conspired with Gary R. George, Mark E. Sostarich and others known and unknown to the grand jury to

"(a) commit offenses involving federal program funds under

Title 18, U.S.C. §666; and (b) to commit mail and wire fraud offenses in violation of Title 18, U.S.C. §§1341, 1343, and 1346." These activities were alleged in the indictment to have violated Title 18, U.S.C. §371.

On April 9, 2004, the Petitioner appeared for arraignment before Magistrate Judge William E. Callahan, Jr. A not-guilty plea to the single count of the indictment was entered.

On August 16, 204, the Petitioner appeared for trial before the Honorable Rudolph T. Randa, Chief United States District Judge, for a jury trial. Jury selection was commenced and completed on August 16, 2004. On August 19, 2004, the jury returned a verdict of guilty with respect to the sole count of the indictment.

On September 20, 2004, the Petitioner filed a Motion pursuant to Rule 29, F. R. Cr P. seeking relief from the verdict. On October 15, 2004, the District Court entered an Order denying the Petitioner's Motion for Judgment of Acquittal.

On January 25, 2005, the District Court sentenced the Petitioner to the custody of the Bureau of Prisons for a term of 24 months. The Court also ordered three years of supervised release and the payment of a special assessment of $100. The Court also ordered that the Petitioner pay $473,415.48 in restitution.

The Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Seventh Circuit on September 2, 2005. On

December 23, 2005, the Court of Appeals affirmed the Judgment of Conviction.

Statement of Facts

Between October 1, 1997 and September 17, 2003, the time frame of the conspiracy alleged in the indictment, Gary R. George was a State Senator in Wisconsin. Mark Sostarich was a lawyer licensed to practice in the State of Wisconsin. Carl A. Gee, the Petitioner, was President and Chief Executive Officer of O.I.C.

O.I.C. in Milwaukee was a part of an international organization of affiliated members founded in 1967 by Reverend Leon Sullivan, an African American, who promulgated a set of guidelines intended to facilitate affirmative action through community involvement. O.I.C. in Milwaukee was a community development corporation involved in housing, education, and employment training. Originally a single focused employment training entity, O.I.C. expanded, diversified, and created affiliated organizations to address particular problems.

O.I.C. over the course of time had multiple contracts with the State of Wisconsin to administer the State's W-2 program. W-2 was a welfare reform program created by State of Wisconsin officials. Petitioner was president and chief executive officer of O.I.C. from 1972 until shortly after his conviction. During the Petitioner's presidency, O.I.C. was involved in the development of inner city housing, as well as the development of commercial projects within the inner

city. The organization also was involved in remedial education projects, daycare facilities, and youth activity opportunities.

In 1997 Attorney Sostarich was approached by Senator George and advised that Inner City Redevelopment Corporation (ICRC) a subsidiary of O.I.C. needed legal counsel to assist in the development of a scattered site low income housing project. George advised Sostarich that I.C.R.C. was seeking new counsel who could provide legal services more economically than the organizations present counsel was providing.

Sostarich, identifying himself as a member of the Milwaukee law firm of Petrie & Stocking, contacted J. Allen Stokes, executive president of I.C.R.C., and indicated an interest on his part and that of Gary George, also a licensed practicing attorney, in providing legal services related to the scattered site housing project. Ultimately Sostarich's proposal was accepted by both I.C.R.C. and National Equity Fund, the financing equity partner of I.C.R.C. All fees paid with respect to Sostarich's, George's and Sostarich's law firms efforts with respect to this scattered site building project were paid at closing on the development project. Neither O.I.C. nor I.C.R.C. paid any of these fees.

In the fall of 1997 Sostarich and the Petitioner, on behalf of O.I.C. and its affiliates signed the first of a number annual retainer agreements. The agreements provided that Sostarich and lawyers he

assigned tasks to would provide legal services to O.I.C. and its affiliated entities for a fixed monthly retainer. In return for the retainer payments, Sostarich and those lawyers working with him would be available for 20 hours of work per month.

From October 1997 through 2003, O.I.C. contracted with the State of Wisconsin to provide services to citizens of the State who were in need of what historically has been referred to as "welfare". In Wisconsin a welfare reform initiative was commenced under the popular title W-2 (Wisconsin Works). This initiative replaced A.F.D.C. (Aid to Families with Dependent Children). At times germane to the alleged conspiracy, O.I.C. engaged in competitive bidding for contracts with the State of Wisconsin. O.I.C. would respond to state R.F.P.'s (Request for Proposals). The W-2 program was funded by the Federal Government (roughly 80%) and the State (roughly 20%).

As a recipient of the W-2 contracts, O.I.C. was required to establish an "allocation accounting system." This requirement was established by the Wisconsin Contract and was mandatorily consistent with the requirements set forth in Circular A-122 from the Office of Management and Budget of the federal government.

Attorney Sostarich never provided any legal services to O.I.C. related to the content of or performance of the W-2 contracts.

The retainer fees received by Sostarich were deposited in

Sostarich's personal checking account. They were not deposited in his firm's account. Sostarich would, after receipt of the O.I.C. retainer funds, write a "personal check" to Senator George for 80% of the amount received. On occasion Sostarich would provide this personal check to George or an aide of George even before depositing the monthly O.I.C. check. Sostarich would also write a check payable to his law firm for the remaining 20% of the retainer payment. Sostarich indicated that the 80/20 split was discussed with and approved by members of his law firm. Sostarich also received legal fees for work done beyond the terms of his retainer. He would follow a similar disbursal pattern with these funds, but the percentage splits were altered.

The government claimed and the Court of Appeals accepted the notion that "federal funds" were used by Petitioner to invest in a George family business. Atlantic Broadcasting Corporation was a Wisconsin corporation owned, on paper, by the family of Senator George. Its only asset was a television station in the Virgin Islands. The government presented evidence that O.I.A., a "for profit" entity affiliated with O.I.C. invested $200,000 in this corporation.

This investment was authorized by the O.I.A. Board of Directors after a presentation by Petitioner. The O.I.A. Board required, however, that the O.I.C. Board of Directors had to concur in the decision to invest. The O.I.C. Board did vote to authorize the investment.